

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3 RICHARD WILCOXON : CIVIL ACTION
4 Plaintiff :
5 -v- :
6 RED CLAY CONSOLIDATED :
7 SCHOOL DISTRICT BOARD OF : NO. 05-524-SLR
8 EDUCATION, and JANAY :
9 FREEBERRY :
10 Defendants :

11 Deposition of JANET BASARA, taken before
12 Elaine Gallagher Parrish, Registered Professional
13 Reporter, at 1509 Gilpin Avenue, Wilmington, Delaware on
14 May 25, 2006, commencing approximately at 9:05 a.m.

15 APPEARANCES:

16 TIMOTHY J. WILSON, ESQ.
17 Margolis Edelstein
18 1509 Gilpin Avenue
19 Wilmington, Delaware 19806
20 for the Plaintiff,

21 BARRY M. WILLOUGHBY, ESQ.
22 Young Conaway Stargatt & Taylor, LLP
23 P.O. Box 391
24 The Brandyvine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
for the Defendants.

ALSO PRESENT:

RICHARD WILCOXON
DIANE DUNMON
JANAY FREEBERRY

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477



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1 Q. At one point you were the acting principal,
2 correct?

3 A. Correct.

4 Q. And when was that?

5 A. 2002-2003 school year. Is that right?

6 MR. WILLOUGHBY: I think it was 2003-2004.

7 THE WITNESS: 2003-2004 school year.

8 BY MR. WILSON:

9 Q. Okay. In your role as assistant principal at
10 Skyline, did you perform functions such as disciplining
11 employees on behalf of the School Board?

12 A. As an assistant principal?

13 Q. Yes?

14 A. No.

15 Q. What about as acting principal?

16 A. Yes.

17 Q. What did you do to prepare for today's
18 deposition?

19 A. I refreshed my memory by reading over some of my
20 notes that I had taken at the time, knowing that it was
21 two years -- two years ago.

22 Q. Your own personal notes?

23 A. Yes.

24 MR. WILLOUGHBY: I want to be clear, that



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1 Q. And what subjects did they team teach?

2 A. PE and health.

3 Q. Can you give me a brief explanation as to how
4 team teaching works?

5 A. Usually they plan together, when teachers team
6 teach they plan together, help each other prepare
7 materials and whatnot, work together sometimes in the
8 same room. In the gym they would -- they could be
9 separated because there was a divider or they could
10 leave the divider open and do a coed, and in health they
11 work together in a multi-purpose room which was our
12 auditorium which was a little smaller than an auditorium
13 but they would put both classes together and teach
14 health.

15 Q. Okay. Prior to this school year Miss Freebery
16 had been on sabbatical, correct?

17 A. Yes.

18 MR. WILLOUGHBY: I object. I'm not sure
19 that she was on sabbatical. She was on maternity leave.

20 MR. WILSON: Well, she just answered yes.

21 THE WITNESS: Well, maternity leave.

22 MR. WILLOUGHBY: You got to be clear in the
23 question. That's why I objected.

24 THE WITNESS: She was on maternity leave.



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1 She had a baby.

2 BY MR. WILSON:

3 Q. Was she out the whole year?

4 A. Half a year.

5 Q. During the 2002-2003 school year were you aware
6 of any tension between Miss Freebery and Miss Wilcoxon?

7 A. Is that the year this all started?

8 MR. WILLOUGHBY: He's referring to the
9 first year when she came back from maternity leave.

10 BY MR. WILSON:

11 Q. The first year they would have team taught
12 together.

13 A. No. There was not a problem that I was aware
14 of.

15 Q. How long have you known Miss Freebery?

16 A. Since I started working at Skyline.

17 Q. When was that?

18 A. What -- do I know what year -- I really don't
19 remember what year. Let's see, it would be 2001, I
20 think 01-02 school year, maybe.

21 Q. So for about five or six years --

22 A. Uh-huh.

23 Q. -- is that approximate? Are you a personal
24 friend of Miss Freebery's?



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1 A. No, I am not.

2 Q. Do you ever socialize with her out of work?

3 A. I have never.

4 Q. Never gone to lunch?

5 A. No, I didn't.

6 Q. Out for drinks?

7 A. No.

8 Q. Ever been to her house?

9 A. Only for Christmas parties which she held for
10 the staff.

11 Q. Parties or party?

12 A. I believe there may have been two. There was a
13 baby shower, and the Christmas party that I remember.

14 Q. Other than those two instances you haven't done
15 anything with Miss Freebery outside of work?

16 A. No, I have not.

17 Q. Were you aware of any problems that Miss
18 Freebery was having in her personal life during the
19 2002-2003 school year?

20 A. Yes.

21 Q. And what were those?

22 A. She had just separated from her husband, was
23 getting a divorce and had just had a baby.

24 Q. Did that have an impact on her professional



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1 with Mr. Wilcoxon performing his duties?

2 A. Do you mean that were in writing or just that
3 indicated there might be issues?

4 Q. Anything that you were aware of?

5 A. He had issues with classroom control. He sent
6 students out of class quite a bit to be disciplined. He
7 was working with Frank Rumford and Frank was mentoring
8 him trying to help him get control; lesson plans, help
9 him with lesson plans, things like that.

10 Q. So, is it inappropriate to send students out of
11 the class if you're having problems with them?

12 A. Not inappropriate. If you're having a
13 discipline problem you would send them out to a timeout
14 room. I just remember that there were a lot coming out
15 of Mr. Wilcoxon's room.

16 Q. Okay.

17 A. And that's when you're comparing a staff of 40,
18 40 teachers or so, he had a large number.

19 Q. Is it possible that that could be an issue of
20 the makeup of the students in his class as opposed to
21 Mr. Wilcoxon?

22 A. As opposed to him?

23 Q. Yes.

24 A. No, all the teachers had the same students. I



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1 Q. Yes. Any type of discipline?

2 A. Yes.

3 Q. Okay. For what?

4 A. The things that Rich -- Richard put on the
5 documentation, he had not brought that to my attention,
6 but when it was found I spoke to Miss Freebery and at
7 that point Rich had already said, I'm sorry, Richard,
8 had already said that he had exaggerated, he had written
9 it in anger and some of it was not true. So when I
10 spoke to Miss Freebery I said verbal reprimand, whatever
11 was true, whatever part of that is true, it needs to
12 stop.

13 Q. Okay. Did you do any investigation into what
14 was true and what was not true?

15 A. We talked about that together as a group.

16 Q. Okay. With Mr. Wilcoxon?

17 A. Yes.

18 Q. Okay. When did he tell you that he exaggerated?

19 A. In that meeting.

20 Q. And what date was that meeting?

21 A. There were a lot of meetings on the 15th, 16th
22 and 17th. We had a lot of in and out, in and out, and
23 we were trying to figure out what exactly happened.

24 Q. Okay. Was the meeting that he allegedly said



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1 BY MR. WILSON:

2 Q. So it's a two-year cycle?

3 A. It is. And it's usually one per year because of
4 time, it just takes a long time to do them.

5 Q. Are you aware of any negatives or
6 recommendations on Miss Freebery's observations from
7 that year?

8 A. No, I am not aware of any.

9 Q. Were you aware from any source that Miss
10 Freebery arrived late for morning duty at any time
11 during that school year?

12 A. I was not until Richard made his documentation.

13 Q. If she had been late for morning duty would she
14 have been required to sign in anywhere?

15 A. If she was late?

16 Q. Yeah.

17 A. No, we didn't have a sign-in in the morning for
18 teachers.

19 Q. So they could just come in whenever they wanted?

20 A. No. They were due in before the students. 7:30
21 the teachers needed to be in the building; 7:45 the
22 students came in.

23 Q. How do you keep track of teachers that came in
24 late?



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1 Q. During that whole school year?

2 A. Uh-huh.

3 Q. Just to bring flowers?

4 A. If even that, yes, maybe two times, brought her
5 flowers, left them in the office.

6 Q. What about 2003-2004 school year?

7 A. I don't remember if I saw Bruce in the building.
8 I don't remember if it happened. I don't.

9 Q. What about the other guy that you can't remember
10 his name during 2002-2003?

11 A. Never met him.

12 Q. How did you know she was dating someone else?

13 A. I don't know.

14 Q. Okay. And were you informed by Mr. Wilcoxon
15 that Mr. Hannah was not following the proper sign-in
16 procedures?

17 A. Not until he wrote his document.

18 Q. And that was in December, correct?

19 A. Yes, but until that point he had never said a
20 word.

21 Q. Were you informed by Mr. Wilcoxon that
22 Mr. Hannah was frequently at the school to see Miss
23 Freebery?

24 A. Not until he -- we found the documents. He



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1 Q. And was she team teaching with Mr. Wilcoxon at
2 the time?

3 A. Yes.

4 Q. Would have Mr. Wilcoxon been notified of this?

5 A. By her.

6 Q. So you wouldn't have given any notification?

7 A. No. No. Normally the procedure would be if a
8 teacher is going to leave or is asking permission to
9 leave, they usually come to us with a plan. I'd like to
10 go see this or I'd like to do that or I have a doctor's
11 appointment and so and so is going to cover my class.

12 Q. Okay. Are there records of this?

13 A. I doubt it. Not now.

14 Q. When did Miss Freebery first come to you with
15 her complaints about the alleged inappropriate comments
16 that Mr. Wilcoxon had made to her?

17 A. The day that she saw that he was documenting her
18 and she came up in tears and said she couldn't believe
19 that he would do that because she had put up with so
20 much and didn't want to get him in trouble for all the
21 things that he had been saying to her and here he is
22 documenting her. She was in shock and she was upset and
23 she said he had been making inappropriate comments.

24 Q. What did she say that he had said?



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1 A. At that particular meeting or in general those
2 three days?

3 Q. At any time.

4 A. Okay. In general during those three days
5 eventually when she calmed down we asked the question,
6 what has he said. And at that time she stated several
7 comments that he had made, some of them of a sexual
8 nature. She looked really good in those pants, made her
9 feel uncomfortable. She had asked Bruce -- he had said
10 something to Bruce about congratulations, you're a daddy
11 again. She had said -- he had said something to some
12 teachers that she was pregnant because she had to keep
13 going to the bathroom, and all of this was embarrassing
14 to her and she had asked him to stop and he kept it up.

15 Q. When did she ask him to stop?

16 A. Each time. According to her. I wasn't there.

17 Q. Do you know when the comments were made?

18 A. When he made those comments to her?

19 Q. Yes.

20 A. I know one of them. I heard it.

21 Q. Okay. Which one was that?

22 A. He had won a poinsettia at our A-plus drawing
23 for the teachers at a meeting, and that afternoon or the
24 next day we had a faculty party, staff Christmas party



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1 at Miss Freebery's house, and he pointed out the
2 poinsettia was there at her class and said he had given
3 it to her because she was the closest thing he had to a
4 wife and a bitch.

5 Q. And he said this directly to you?

6 A. He said this to a group of people who were in
7 the foyer as he was pointing to the flower in the foyer.
8 I was standing on the steps. Everybody turned around
9 and moved away. It was an uncomfortable comment.

10 Q. Okay. You have mentioned a couple times about
11 the notes that Mr. Wilcoxon kept on Miss Freebery?

12 A. Uh-huh.

13 Q. I am going to refer to that as a journal, okay?

14 A. Okay.

15 Q. And I mean obviously you're aware of the
16 journal, correct?

17 A. Yes. Uh-huh.

18 Q. And at some point you came into possession of
19 the journal, correct?

20 A. Yes.

21 Q. Can you tell me how that happened?

22 A. Janay brought it upstairs the morning that it
23 was found.

24 Q. And upstairs means to your office?



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1 A. Yeah. I'm sorry, yes.

2 Q. And what did she say?

3 A. She couldn't believe that he was doing this, why
4 would he write all these lies, why would he do this?
5 What was his point? She had put up with so much from
6 him and she couldn't believe that he was going to do
7 something like this. Why was he trying to do this? She
8 had absolutely no idea.

9 Q. What did she think he was trying to do?

10 A. We didn't know. Why would you keep a log like
11 that? It didn't make any sense.

12 Q. Did she say how she got the journal?

13 A. Yes.

14 Q. How did she get the journal?

15 A. Mr. Wilcoxon was absent that day, called in
16 sick. He did not have lesson plans and Mr. Rumford went
17 to try to find lesson plans. If a teacher is absent
18 they often leave them on their desk. We have emergency
19 plans in our file. When Mr. Rumford looked for those
20 they were outdated by two years, so they couldn't be
21 used. He went downstairs into Mr. Wilcoxon's office
22 hoping that he had left plans on his desk. He didn't.
23 But there was a notepad there. The substitute was with
24 Mr. Rumford, and he said here, just get kids to sign in



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1 at this point, we have kids coming in, so sign the kids
2 in and we'll get something going here. So he had to
3 talk to Miss Freebery about getting a lesson and what
4 was going to happen with the kids that day. There were
5 no plans.

6 Q. So you thought those were lesson plans?

7 A. No, he took the book to get the kids to sign in.
8 Teachers should have a class list so that a substitute
9 would know who is supposed to be in class, otherwise you
10 could have half your class missing and you'd not even
11 know it.

12 Q. Okay. Wouldn't Mr. Rumford have access to the
13 class list on his computer?

14 A. Not on -- he might have been able to pull that
15 up eventually but, as I said, I have never seen a
16 teacher not leave plans in some form.

17 Q. Okay.

18 A. And you need a class list. So it would be
19 assumed it would be on your desk. You have a record
20 book where you keep grades, that could have been on his
21 desk and that would be the quickest way to find out.

22 Q. So if --

23 A. You're looking for lesson plans, you're looking
24 for bell schedule, you're looking for class list. You



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1 need those all to be together. For somebody to pull
2 those together when the students are coming in takes
3 time. It would be assumed it would be on the desk or in
4 a mailbox for the substitute.

5 Q. So I don't understand if he got this information
6 for the substitute how it ended up with Miss Freebery?

7 A. Because she was the other teacher in the room.
8 They were team teaching at that point in the same gym.

9 Q. If they were team teaching wouldn't Miss
10 Freebery have lesson plans --

11 A. No. She had her list of students, he had his.
12 In the gym they could draw the door. But without a
13 substitute there -- without a lesson plan there then I'm
14 assuming, and you can ask Mr. Rumford, he was looking
15 for some direction on what the kids were working on,
16 what they were doing so they could continue.

17 Q. But it wouldn't have been Miss Freebery's
18 obligation to teach Mr. Wilcoxon's class?

19 A. No, it would not. No.

20 Q. How did she end up with the notebook?

21 A. He took the notebook, had the students sign in,
22 and then told the substitute to give them to Miss
23 Freebery and that way we could figure out if anybody was
24 missing, any students that cut class, everybody was



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1 didn't you just talk to her? If she was coming in late
2 and that was bothering you why didn't you say something?
3 If she was asking you to do something you didn't want to
4 do why didn't you just say something to her? You saw
5 her every day. Why wouldn't you just speak to her about
6 that? Why would you keep a log? Especially then tell
7 me that the log is fabricated in some way, that it's
8 exaggerated and that some parts aren't even true. What
9 would be the point of that? So this log, that's what
10 I'm saying, that this log didn't make a whole lot of
11 sense.

12 BY MR. WILSON:

13 Q. Okay. But there is no rule against it?

14 A. No.

15 Q. All right. And you requested a meeting with
16 Mr. Wilcoxon that day, correct?

17 A. It would have been the following day, the 16th.

18 Q. The following day?

19 A. The following day.

20 Q. And that was December 16th?

21 A. Yes. He was absent the 15th and that's what
22 started all of that.

23 Q. Okay.

24 MR. WILSON: I'd like to have this marked.



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1 than just speak to her.

2 Q. Okay. Why was it important that you find out
3 who?

4 A. It wasn't important.

5 Q. Okay. You said why he kept the journal, what
6 did he answer when you asked him that?

7 MR. WILLOUGHBY: Objection. Asked and
8 answered.

9 BY MR. WILSON:

10 Q. You can answer.

11 MR. WILLOUGHBY: You can answer again, if
12 you want but --

13 THE WITNESS: Okay. Say the question
14 again, please.

15 BY MR. WILSON:

16 Q. You said that you asked him why he kept the
17 journal?

18 A. Uh-huh. And he said he had overheard -- someone
19 had told him that he was difficult -- that he was -- I'm
20 sorry. Someone had told him that they heard Janay say
21 that he was difficult to work with, and he talked to a
22 group of friends and someone advised him to cover his
23 ass.

24 Q. Had you read the journal prior to this meeting?



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1 MR. WILLOUGHBY: Just to be clear, this is
2 December 16th?

3 MR. WILSON: December 16th.

4 THE WITNESS: Then I would have seen it on
5 the 15th.

6 BY MR. WILSON:

7 Q. And you read the allegations in the journal?

8 A. Yes.

9 Q. And had you met with Miss Freebery prior to this
10 meeting?

11 A. Yes.

12 Q. Was Mr. Rumford at that meeting?

13 A. Yes.

14 Q. What happened at that meeting?

15 A. Well, there were several meetings on the 15th,
16 16th and 17th. So the meeting that I had with Janay was
17 to clarify what had happened, if any of this was true,
18 if any of -- what was going on with this, and basically
19 she said no, this was -- this was fabricated. This
20 wasn't true. Why was he lying? Why would he do all of
21 this? She put up with so much. She was trying not to
22 get him into trouble and to deal with it herself, and so
23 she never said a word about the things that he was
24 saying to her, so she just couldn't understand it.



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1 Q. So she denied everything that was in the
2 journal?

3 A. Uh-huh. And then in the meeting when we had
4 Mr. Wilcoxon he agreed, he wrote it in anger, he
5 exaggerated and some of the stuff was not true. Those
6 were his words.

7 Q. Did Miss Freebery ever admit to you that she was
8 often late?

9 A. No. No.

10 Q. Never?

11 A. She did not admit that she was often late, no.
12 Whether she came in a couple minutes late, she didn't --
13 we didn't get into that, but she was never late when the
14 kids were there and that was on the paper.

15 Q. That's what she said?

16 A. Yes.

17 Q. Did you do any further investigation into that?

18 A. Well, how could I?

19 Q. I don't know. Could you talk to the students
20 perhaps? Did you talk to the students?

21 A. No.

22 Q. Why not?

23 A. What would I say to a student? Did you see Miss
24 Freebery come in late? I wouldn't go to a student over



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1 that, especially after Mr. Wilcoxon said that it was
2 fabricated and it was exaggerated.

3 Q. He said everything in the journal was
4 fabricated?

5 A. He agreed that there were exaggerations, he
6 wrote it in anger, and that some of it was not even
7 true.

8 Q. Did you ask him specifically --

9 A. Yes.

10 Q. -- the things that weren't true?

11 A. Yes.

12 Q. What did he say?

13 A. In particular he pointed out that she -- he had
14 said something on the journal about she --

15 Q. I'll tell you what. Why don't we look at the
16 journal and that might help you go through it a little
17 better.

18 A. Okay.

19 Q. I apologize. I was here by myself last night so
20 I still have your sticker on there.

21 MR. WILLOUGHBY: Why don't you just refer
22 to it as Wilcoxon-1?

23 MR. WILSON: Off the record.

24 (Discussion held off the record.)



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1 (Basara Deposition Exhibit Basara-3 was
2 marked for identification.)

3 THE WITNESS: This one in particular --

4 MR. WILLOUGHBY: Wait. Are you ready now?

5 THE WITNESS: I'm just saying on one in
6 particular that I was looking for.

7 BY MR. WILSON:

8 Q. Okay.

9 A. He said -- he wrote --

10 MR. WILLOUGHBY: Let's get to the right
11 page. Bates number is 00760?

12 THE WITNESS: Yes.

13 BY MR. WILSON:

14 Q. And what's the date of the --

15 A. It is the third little bullet down under
16 November 24th continued.

17 Q. Okay.

18 A. Arrived at 6:22 for choice open house. Teachers
19 were supposed to arrive at 6 p.m. leaving me to set up
20 everything. And that in particular Janay said I had set
21 everything up beforehand and you know it. It was all
22 ready before I left. You know that. Why would you
23 write that? And he said yes, that's true.

24 Q. Okay. So he fabricated this one?



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1 A. Uh-huh.

2 Q. Any others?

3 A. That was the one I remember off the top of my
4 head.

5 Q. Okay. Can you go through and read this and tell
6 me the other ones?

7 A. As far as lates, he said yes, he was
8 exaggerating.

9 Q. Well, how about the very first one, September
10 8th: Janay was so late to school she missed her first
11 two classes, first planning and half of third class?

12 A. Yeah. I asked her about that. She said she
13 didn't remember. I didn't remember that. I mean if she
14 had missed classes we would have had to have a
15 substitute or she would have called in.

16 Q. It says the office called a sub in for her?

17 A. Okay.

18 Q. So did he admit to fabricating this?

19 A. I don't know that -- I can't remember which
20 specific ones he did except for that one in particular I
21 did remember, but I can't tell you which ones he said
22 were and were not, but he generally admitted that this
23 was not the whole truth and so then that becomes really
24 hard to say that any of it is true. He said he wrote it



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1 in anger, and he was upset with her because she had said
2 he was difficult to work with.

3 Q. But you didn't endeavor to find out which ones
4 were fabricated and which ones were exaggerated and
5 which ones were true, correct?

6 A. Well, we were talking about the whole paper.

7 Q. Uh-huh.

8 A. The whole log. He admitted - and I think I have
9 said this about four times now - he admitted that there
10 were fabrications in here.

11 Q. Right.

12 A. That this was exaggerated. So then the whole
13 thing becomes --

14 Q. Did you ask him if anything in here was true?

15 A. He was -- he was saying that generally what she
16 was doing was coming in late. She said she wasn't. It
17 becomes he said she said. If he had told me this I
18 would have been able to go down and look, if need be, or
19 to talk to her about it, which is what I would have
20 done, or talked to him.

21 Q. So this was an instance of he said she said?

22 MR. WILLOUGHBY: Are you talking about the
23 stuff in the log?

24 MR. WILSON: Yeah, during this meeting and



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1 the stuff in the log.

2 THE WITNESS: That's two questions. He
3 said, she said is on here. He admitted that this had
4 fabrications and exaggerations.

5 BY MR. WILSON:

6 Q. Okay.

7 A. That's it.

8 Q. Okay. So you didn't endeavor to find out if any
9 of this was true?

10 MR. WILLOUGHBY: I think it's been asked
11 and answered.

12 MR. WILSON: If she can answer.

13 THE WITNESS: I don't know how many more
14 times I have to say that.

15 MR. WILLOUGHBY: She's been through this.

16 THE WITNESS: He admitted that this was not
17 truthful.

18 MR. WILSON: That nothing in here was true?
19 He said nothing in here was true?

20 THE WITNESS: He said he exaggerated. He
21 wrote it in anger. So what -- what would you want me to
22 do with that I guess? What do you want me to do with
23 it? He admitted that it wasn't truthful. And I asked
24 him at that point, please tell me if it happens again.



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1 A. Four of us: Mr. Wilcoxon, Miss Freebery, myself
2 and Mr. Rumford; and the purpose of that meeting was
3 conflict resolution.

4 Q. Okay. Did Mr. Wilcoxon have a union
5 representative of his choice there?

6 A. No.

7 Q. Was he given 48-hours notice of the meeting?

8 A. He doesn't need 48-hours notice.

9 Q. Why is that?

10 A. Because that's if he's going to a district level
11 meeting, not an in-school meeting.

12 Q. Was he given the notice in writing, notice of
13 the meeting in writing?

14 A. I don't remember.

15 Q. Do you know how much time he was given, how much
16 notice he was given before the meeting started?

17 A. I don't know.

18 Q. What happened at this meeting?

19 A. At this meeting my goal was to help the two of
20 them be able to work together, to get past this whole
21 issue, and to make it clear what has been said to each
22 of them about each of them so that they both --
23 everybody was on the same page, and to make it clear
24 that it shouldn't happen again.



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1 Q. All right. Did Miss Freebery say anything at
2 this meeting?

3 A. Yes.

4 Q. What did she say?

5 A. She talked about the comments that he had made,
6 that they were offensive.

7 Q. Is this the first time you heard about it?

8 A. No. The 15th.

9 Q. Okay. Did you tell Mr. Wilcoxon what the
10 comments were?

11 A. Miss Freebery did.

12 Q. She did? And what did she say the comments
13 were?

14 MR. WILLOUGHBY: I think this has been
15 asked and answered a long time ago in the deposition.

16 MR. WILSON: That's what Miss Freebery said
17 in the initial meeting on the 16th. Were they the same
18 comments on the 17th?

19 THE WITNESS: Yes.

20 BY MR. WILSON:

21 Q. Did Mr. Wilcoxon deny the comments?

22 A. No. Actually he acknowledged it.

23 Q. How did he acknowledge it?

24 A. He said, oh, I was just joking, and she opened



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1 the door. She started talking about when she went on
2 her honeymoon she was on a nude beach, so I thought it
3 was okay. To me that was an acknowledgment that he had
4 said something and that he knew what we were talking
5 about, what she was talking about.

6 Q. Did Miss Freebery demand to know who advised him
7 to keep the journal?

8 A. No.

9 Q. Did you?

10 A. No demands.

11 Q. Did you ask?

12 A. A request, yes, but that was at an earlier
13 meeting, I believe when it was just Mr. Wilcoxon there.

14 Q. Did Miss Freebery make a request at this meeting
15 to know who told him to keep the journal?

16 A. I believe that she asked.

17 Q. Did Mr. Wilcoxon tell her?

18 A. No.

19 Q. Did he say why not, why he wouldn't tell her?

20 A. He wouldn't say why not, no.

21 Q. Did this upset Miss Freebery?

22 MR. WILLOUGHBY: Did what upset Miss
23 Freebery?

24 MR. WILSON: That he refused to tell her



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1 who told him to keep the journal.

2 THE WITNESS: Minor issue, minor compared
3 to everything else that was going on, absolutely.

4 BY MR. WILSON:

5 Q. Okay. Did you make a statement to Mr. Wilcoxon
6 that you needed to figure out how he and Miss Freebery
7 could finish out the year together?

8 A. I said we have got a long year, we need to
9 figure out how to make this work, and it was December,
10 so it was a long year, and there was huge tension and
11 great upset on both parts. He was very, very upset.
12 She was very, very upset, and so I said, yeah, we got a
13 long year, we got to figure out how to make this work.

14 Q. And did Mr. Wilcoxon ask you about this
15 statement?

16 A. Later he did.

17 Q. Okay. And did you respond you're not tenured,
18 are you?

19 A. No, well, that comment was made in there
20 somewhere. But when he asked me why did I say that, he
21 said maybe I'm reading too much into this, but you said
22 we have a long year, and I said, Rich, yeah, you're
23 reading too much into it. We do have to get this year
24 -- we have a lot of time left this year and you're both



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1 very, very upset. That's what I was talking about.
2 Summer is a break and you come back and you're
3 refreshed. Hopefully that would have happened.

4 Q. So how did the tenured comment come into play?

5 A. I believe he asked me if this was going to be a
6 problem because he was non-tenured and I said you're
7 non-tenured, just acknowledging you're non-tenured and
8 actually I wasn't sure that he was non-tenured at that
9 point because I knew he had some time in at other
10 schools, didn't really think about it that much.

11 Q. Did you begin consider terminating Mr. Wilcoxon
12 at that time?

13 A. No. Again, my job was to try to work with him,
14 work with Janay, try to get that relationship working
15 again because it was very broken at that point, and I
16 had two teachers in the same space trying to work
17 together and that was going to be very hard on the
18 students, and I didn't want to see that happen.

19 Q. Okay. So that was the first meeting on December
20 17th, correct?

21 A. Yes. With -- well, there were many meetings on
22 the 15th and 16th.

23 Q. Okay.

24 A. The 17th meeting with all of us, that's where



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1 that -- well, I don't even know when he said that. He
2 didn't say that there. I think he said that after
3 school that day. He came back in, met with Mr. Rumford
4 and I at one point and said I feel sick, I feel sick to
5 my stomach. I know that she just made accusations in
6 front of my supervisors. I know where that can lead. I
7 have researched this or I have experience with this. He
8 said something along the line that he knew what this --
9 what this meant. He did. I didn't know what he was
10 talking about at that point.

11 Q. Okay. Did he deny making the comments at this
12 after-school meeting on December 17th?

13 A. I don't remember. At that point he was more
14 concerned with my comment about we have a long year
15 ahead of us. He took -- he interpreted that as at the
16 end of the year he wasn't going to be there. That was
17 not my intention.

18 Q. At the after-school meeting on December 17th did
19 he tell you that he thought that this was Miss
20 Freebery's way of getting back at him for keeping the
21 journal?

22 A. No. I don't remember that. And by that point
23 he had already said she opened the door. And he said it
24 in front of three people.



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1 A. Yes.

2 Q. And the date says January 20th, 2004?

3 A. Correct.

4 Q. And in handwriting beside it it says 1-22-04?

5 A. Correct.

6 Q. JB?

7 A. Yes.

8 Q. Is that your writing?

9 A. Yes. Do you want to know why?

10 Q. Yes.

11 A. He was out of school for three days previous to
12 the 20th. The 20th he was expected to be back in
13 school, and so when I wrote the letters I planned to
14 meet with him on the 20th but he was absent two
15 additional days and so I had to wait two more days to
16 the 22nd to have our meeting.

17 Q. Okay. And what was he being disciplined for
18 with this letter?

19 A. This letter was a statement that we had met, we
20 talked, that there were comments made. This was a
21 documentation of the meeting that we had the meeting.
22 In addition, Miss Freebery was going to press charges if
23 it happened again, and so I felt it was important that
24 he have that in writing should another comment be made



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1 so that there would be no misunderstanding that he had
2 been warned that if these comments continued she was
3 going to press charges.

4 Q. Okay. And this letter references the December
5 17th, 2003 meeting, correct?

6 A. Yes. Right.

7 Q. So there was some discipline that came out of
8 that December 17th meeting, correct?

9 A. This is just a statement that we had the meeting
10 and that those comments needed to be stopped.

11 Q. Okay. And if the comments --

12 A. Continued there would be action.

13 Q. And if they stopped there would be no further
14 action?

15 A. Right. She was not pressing charges at that
16 time.

17 Q. So this letter is not a form of discipline?

18 A. Yes, it is.

19 Q. Okay.

20 A. It's a statement of what happened, and what was
21 discussed.

22 Q. All right. And when you presented -- was this
23 the first letter you gave to Mr. Wilcoxon at that
24 meeting?



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1 A. Yes. Yes.

2 Q. When you presented him with this letter did he
3 request a union representative?

4 A. Yes.

5 Q. Was he provided one?

6 A. No. What I told him was that at this time I'm
7 meeting with him as a principal with a teacher and he
8 could receive the letters and then go directly to his
9 representative and talk to them and then we would meet
10 again, but all I was doing was giving him the letters at
11 that point. He did not need to make any comments
12 whatsoever. I wasn't asking him to comment.

13 Q. So you told him he couldn't have a union
14 representative?

15 A. I just said, all I'm going to do is give you the
16 letters. You can take them directly to your
17 representative or you can call Mr. Norton, you can do
18 whatever you need and then we'll deal with that. But
19 this was just a matter of getting the letters to him
20 which could have been mailed or put in his mailbox but I
21 was handing them to him.

22 Q. Okay. I'd like to mark another exhibit.

23 (Basara Deposition Exhibit Basara-6 was
24 marked for identification.)



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1 Q. Okay. Overall was this a good --

2 A. Acceptable.

3 Q. And you referred to the last one as an announced
4 observation, and on the front page of this there is a X
5 beside --

6 A. Unannounced, correct.

7 Q. -- unannounced. So is this an unannounced
8 observation?

9 A. Correct, and it was PE rather than health,
10 totally different setting.

11 Q. How so?

12 A. One is in the gym, students are being active,
13 and the other one was in an auditorium-type setting
14 called the multi-purpose room where students were doing
15 written work, reading, discussion, small group work.

16 Q. And as of February 12th, 2004 Mr. Wilcoxon was
17 no longer team teaching with Miss Freebery, was he?

18 A. Probably not by then. Absolutely not.

19 Q. Okay. I'd like to have that marked as 13.

20 (Basara Deposition Exhibit Basara-13 was
21 marked for identification.)

22 BY MR. WILSON:

23 Q. Okay. Can you review that and let me know when
24 you're finished?



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1 A. Uh-huh. I think there is a page missing. There
2 is a page missing.

3 Q. What page?

4 A. It would have been the one before the signature
5 page.

6 Q. Okay. Do you recall what was on that page?

7 A. It would have been my recommendations and
8 commendations and more of what happened in class, I
9 suppose.

10 MR. WILLOUGHBY: Here is, I got . . .

11 Do you want to mark that one as the next
12 one so we have the page? What number are we up to?

13 MR. WILSON: Okay. I'll just get some
14 copies of this made.

15 MR. WILLOUGHBY: If you just want to mark
16 it as the next exhibit, I have got copies here.

17 MR. WILSON: You do?

18 MR. WILLOUGHBY: Yes. What number are we
19 on?

20 MR. WILSON: This would be 14.

21 (Basara Deposition Exhibit Basara-14 was
22 marked for identification.)

23 BY MR. WILSON:

24 Q. Off the record.



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1 (Discussion held off the record.)

2 THE WITNESS: Okay.

3 BY MR. WILSON:

4 Q. Okay. You have been handed two exhibits, one
5 was exhibit 13 and one is exhibit 14. When you were
6 handed 13 you indicated that one page was missing and
7 Mr. Willoughby was kind enough to supply one with all
8 the pages intact. So I am going to ask you about
9 exhibit 14, okay?

10 A. Okay.

11 Q. And can you tell us what this is?

12 A. This is a lesson analysis, unannounced, in
13 health which was in the multi-purpose room.

14 Q. And is that your signature on --

15 A. Yes.

16 Q. -- the third page -- excuse me, fourth page?

17 A. Uh-huh. Yes.

18 Q. So you conducted this --

19 A. Yes.

20 Q. -- analysis?

21 A. Yes.

22 Q. Did Mr. Wilcoxon receive unsatisfactory grades
23 on this lesson analysis?

24 A. Well, there is no term for that.



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1 Q. Okay. Let me rephrase it. Is this an
2 unsatisfactory lesson analysis?

3 A. There were parts of it that were unsatisfactory.
4 They're stated in the recommendations.

5 Q. Okay. And what is that?

6 A. Do you want me to read them all?

7 Q. Well, you can just mention them if you can.

8 A. Mr. Wilcoxon had written an objective on the
9 board but the screen was pulled down so the kids
10 couldn't see what he wrote up there, so I was basing
11 what his objective was on what he said rather than what
12 he wrote, and I felt that it wasn't clear enough
13 compared to what it should have been, what it could have
14 been, that that piece is critical, and that's been
15 stated in previous observations.

16 Q. Okay. Is that it?

17 A. Oh, no. I recommended in here that he do more
18 careful planning when he does a group assignment. The
19 students were allowed to just pick their own groups and
20 move wherever they wanted. Having been a classroom
21 teacher myself I know you need to give some direction to
22 that. Oftentimes you would want to put students
23 together who could work well together, for example a
24 high rating student with a lower rating student, and you



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1 look for those differences in order to help students
2 help each other. There didn't appear to be anything
3 like that going on. Students were able to pick whoever
4 they wanted to work with, which is fine, that happens
5 from time to time also.

6 He said that they could move to their
7 groups, and everybody moved over to the same side except
8 for two groups, one behind and one to the side. That
9 clustered so many kids together that they then became
10 loud in trying to talk to each other. Again, we're in
11 an auditorium, kind of a horse-shoe shape, and one
12 group, the groups were lining themselves this way, chair
13 one, two, three and four. So when partner one is
14 talking to partner four he has to yell. So had he
15 thought that through a little bit he might have put them
16 in a group of four so that they could have talked to one
17 another in a lower voice. But he had what, 34 students
18 in there? 38 students, and so in forming groups my
19 suggestion was that he think it through a little bit
20 more, and make those kinds of directions clear to the
21 students.

22 He also had not told the students initially
23 that they were going to be making a presentation. If
24 students know they're going to make a presentation then



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1 they need to be prepared who is going to speak on their
2 behalf and what is that person going to say, to stand up
3 and do that. He did not give that direction in the
4 beginning of the lesson but as everybody returned to
5 their seats then he said okay, so I want to have
6 somebody come up and tell us what you did.

7 There was a serious issue with noises where
8 the students were whistling and one student started on
9 one side of the room making a whistle sound and when
10 Mr. Wilcoxon looked that way another student on the
11 other side of the room whistled and when he looked over
12 that way another student made a whistle somewhere else,
13 so he was trying to figure out who was doing what. And
14 that seemed to be students were embarrassing him. That
15 doesn't happen normally.

16 Q. Okay.

17 A. That went on for quite a bit. He did attempt to
18 stop that by saying everybody -- by saying to the whole
19 group, you need to stop, stop that. And then at one
20 point he said if you do that again you're going to get
21 sent out but he did not look at a particular student
22 when he said that. He just said it in general. Well,
23 if you don't know who is doing it how are you going to
24 send them out and the kids know that. So then that



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1 becomes a threat that you can't follow through on which
2 undermines your authority.

3 Q. Now, this --

4 MR. WILLOUGHBY: I don't think she was
5 done.

6 MR. WILSON: Okay.

7 THE WITNESS: No, there is more.

8 BY MR. WILSON:

9 Q. Okay.

10 A. Let's see. Clearer directions was in here as a
11 recommendation that the students have all the
12 information, such as you're going to need to report out,
13 pick a person to report for your group. That needed to
14 be clearer.

15 Off task, when attempting to control . . .
16 When students close an activity or when he closes an
17 activity for the day, then you should revisit the
18 standard, what was it you were trying to teach the
19 students, and then you want them to tell you that in
20 that -- in the reporting out you would expect to hear
21 the students got what they were supposed to learn, and
22 there was no connection there. And I recommended that
23 he try to have closure match up with the performance
24 indicators. I suggested heterogenous groupings was a



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1 great idea. I'm glad that he tried to group students
2 because that's a good way to learn, but that it would
3 have been more effective if he put highs with lows or
4 one behavior problem in a group or something like that,
5 some way that you differentiate based on some individual
6 need.

7 This lesson was not brought to closure.
8 And, again, higher order thinking questions was
9 encouraged. He had two in the lesson and I was
10 suggesting that he put more, which is similar to what I
11 had said in the other one.

12 Q. Is that it?

13 A. I think so.

14 Q. Okay. Did he do anything good?

15 A. Yes.

16 Q. Okay. Can you tell me that?

17 A. He varied the activities. He had some whole
18 group discussion. He did review what he had done the
19 day before. You want to mix it up a little bit. Kids
20 can't sit there for 45 minutes and listen, so he did
21 have them try group activities. To have them present
22 out to the class was a good idea. It just wasn't
23 executed in a good way. It could have been improved.
24 Having students work together in groups of four was a



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1 good idea so that they could talk through and more
2 people can share in that way, so those were compliments.

3 Let's see. The activities that he had were
4 good. The discussion that he had about news articles or
5 magazine articles and how they tried to get you to buy
6 cigarettes, that was a good lesson to have so the kids
7 can understand the influences.

8 I didn't feel that he really made that
9 point and that was a suggestion in here, in that there
10 was a discussion early on in this lesson, what could you
11 buy with the money that you saved from cigarettes. If
12 you didn't buy cigarettes, how much money would you save
13 in a year and what could you buy, and then it dropped
14 and it was sort of -- would have been a lot better if
15 you then came to the conclusion as a group or
16 individuals came to the conclusion then we shouldn't
17 smoke, then we're wasting our money, but that was a
18 piece that just -- it just fell because it didn't get
19 concluded.

20 Q. Okay. Are you done?

21 A. Yes.

22 Q. Okay. Would you view this as an acceptable
23 observation?

24 A. Not particularly.



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1 Q. Unacceptable?

2 A. Unacceptable. Lots of way to improve, and after
3 two years I wouldn't expect to see the same -- these
4 kinds of problems.

5 Q. Had he had an unacceptable observation prior to
6 this?

7 A. Just what we read, there were recommendations in
8 there, in the first one that I did.

9 Q. But those were acceptable?

10 A. They were relatively acceptable. The first one
11 was with a team teacher. The team teacher was Miss
12 Freebery was keeping classroom control as he was
13 teaching. She was adding in pieces that he forgot
14 during that team teaching time. This time he was on his
15 own for the first time.

16 Q. Well, he was on his own with Mr. Bartoli,
17 correct?

18 A. In the gym. In the gym. A different set.

19 Q. Okay. And when Miss Freebery would get observed
20 when they were team teaching she would have the benefit
21 of Mr. Wilcoxon's presence, too, as well, correct?

22 A. I suppose. I can't say I observed her with
23 that. I don't remember that.

24 Q. Did you observe Miss Freebery during this school



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1 A. Yes.

2 Q. -- just as much as you always had?

3 A. Yes.

4 Q. Okay. We're going to mark another one.

5 (Basara Deposition Exhibit Basara-15 was
6 marked for identification.)

7 Q. Can you tell me what this is?

8 A. Performance appraisal for the end of the year.

9 Q. For the end of the school year 2003-2004?

10 A. Correct.

11 Q. And is that your signature on the last page?

12 A. Yes.

13 Q. Okay. Just briefly can you identify the areas
14 where Mr. Wilcoxon received effective -- the categories
15 that Mr. Wilcoxon was rated effective?

16 A. That was organization and management, barely but
17 effective, instructional strategies, student-teacher
18 interactions, and evaluations of student performances.

19 Q. And what categories was he graded as
20 unsatisfactory?

21 A. Instructional planning and related
22 responsibilities.

23 Q. Okay.

24 A. What goes into this is the observations, letters



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1 teacher you would expect to get some kind of help and
2 that was a lot of help. He took those plans and used
3 them as his own for two years and didn't change much
4 other than a little thing here or there.

5 Q. Is it relevant that they were in Mr. Rumford's
6 handwriting or just that they were Mr. Rumford's plans?

7 A. It is relevant. You would expect a teacher is
8 going to write their own lesson plans.

9 Q. Okay. So if he had just copied Mr. Rumford's in
10 his own handwriting?

11 A. That wouldn't make it any better technically.
12 Technically he should be doing his own lesson plans. He
13 should be spending time thinking about what lesson needs
14 to be learned, what is the objective, and how am I going
15 to reach that and what can I use and take a look at the
16 lessons -- the materials that were there and decide if
17 he wanted to use them or not.

18 Q. So was the issue that they were ineffective
19 plans or that he didn't do them himself?

20 A. The issue was that he was using someone else's
21 plans for two years and didn't take the time to improve
22 the plans in any way really.

23 Q. Okay. This is the last issue I am going to hit.
24 Was Mr. Wilcoxon disciplined for a theft of money from



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1 back to you to give his explanation?

2 A. Yes.

3 Q. I am just going to ask you, I am not going to
4 have you respond to all of the things, but on the first
5 page he in the third paragraph in the narrative section
6 talks about C.J. laying across two desks in the
7 multi-purpose room. I don't think you covered that when
8 you were being asked questions about that earlier?

9 A. No.

10 Q. What was going on with that?

11 A. C.J. was a big boy. The desks were -- you sat
12 at a chair and then you could flip the desk up and over
13 and C.J. had himself stretched out over the desk and the
14 other desk next to him. He wasn't putting his feet up.
15 He wasn't laying down that way but he had himself
16 stretched out across two desks.

17 Q. And you observed that in the observation?

18 A. Yes.

19 Q. And then he said makes comments about you
20 allegedly exaggerating the noise level, and the
21 whistling issue?

22 A. Uh-huh.

23 Q. Now, during the course of this whistling that
24 was going on, did you ever hear him say a student name,



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1 Johnny, stop whistling?

2 A. No, he did not.

3 Q. He didn't identify anybody?

4 A. No. No. And I didn't even see him look
5 directly at a person. He was looking at a whole
6 section.

7 Q. Okay. And then let's go over to the second
8 page. On the second full paragraph he's responding to
9 your comments that the students were playing cat and
10 mouse game?

11 A. Uh-huh.

12 Q. In here he now identifies two students by name
13 apparently?

14 A. Uh-huh.

15 Q. Did he ever do that in the --

16 A. No, he did not.

17 Q. -- in the classroom?

18 A. No.

19 Q. He makes a response to your comments about the
20 students picking their own groups?

21 A. Uh-huh.

22 Q. What did he say about that?

23 A. He said this was the first time that he ever did
24 that. And that normally he does put them in groups.



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1 Q. So he was saying --

2 A. That would have been heterogenously grouped a
3 high and a low, but this happened to be the first time
4 because a student wanted to do it, so he let him do it.

5 Q. So this just happened to be a coincidence?

6 A. Yes, first time, just happened to be that I was
7 observing.

8 Q. He makes a comment about he says finally. Can
9 you read that?

10 A. Finally, Mrs. Basara states that the class was
11 not brought to closure. I did not bring the activity to
12 closure because we were not finished. Closure was done
13 the following day after all groups presented their
14 information and was tied back into the State standard.

15 Q. Now, is it appropriate for a teacher not to
16 bring closure to a lesson because they're going to
17 continue on the following days with lessons on the same
18 subject?

19 A. No. Each day you bring closure to what you have
20 done each day, and if several students have presented,
21 then at that point you would draw some conclusions and
22 then say what we would be doing tomorrow. So closure is
23 finish what we did today, wrap it up, bring it back to
24 the standard, bring it back to the performance



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1 indicator, and then say and tomorrow we will and you
2 talk about what you'll do tomorrow to give them a little
3 taste of the lesson for the next day.

4 Q. Don't some of these units like tobacco and
5 alcohol --

6 A. Yes, they would take weeks.

7 Q. -- let me finish. Don't some of these lessons
8 take a long time to present to the students?

9 A. Yes.

10 Q. All right.

11 A. Could be a week, could be two weeks in some
12 cases.

13 Q. So you wouldn't just wait until you were done
14 the unit to all of a sudden bring closure to the whole
15 unit?

16 A. Correct.

17 MR. WILLOUGHBY: Okay. That's all I have.

18 MR. WILSON: Okay.

19 MR. WILLOUGHBY: All right. We will read
20 and sign.

21 (Discussion held off the record.)

22 (Whereupon the Deposition concluded at
23 approximately 12:15 p.m.)

24



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICHARD WILCOXON : CIVIL ACTION
Plaintiff :
-v- :
RED CLAY CONSOLIDATED :
SCHOOL DISTRICT BOARD OF : NO. 05-524-SLR
EDUCATION, and JANAY :
FREEBERRY :
Defendants :

Deposition of FRANK RUMFORD, taken before
Elaine Gallagher Parrish, Registered Professional
Reporter, at 1509 Gilpin Avenue, Wilmington, Delaware on
May 25, 2006, commencing approximately at 1:15 p.m.

APPEARANCES:

TIMOTHY J. WILSON, ESQ.
Margolis Edelstein
1509 Gilpin Avenue
Wilmington, Delaware 19806
for the Plaintiff,

BARRY M. WILLOUGHBY, ESQ.
Young Conaway Stargatt & Taylor, LLP
P.O. Box 391
The Brandyvine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
for the Defendants.

ALSO PRESENT:

DEBORAH COLES, Paralegal
RICHARD WILCOXON
JANAY FREEBERRY
DIANE DUNMON

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477



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1 A. No.

2 Q. Miss Basara?

3 A. No. At the meetings with Mr. Willoughby, yes.

4 Q. And that's all, no other conversations besides
5 that?

6 A. Right.

7 Q. Okay. Did Mr. Wilcoxon and Miss Freebery team
8 teach during the 2002-2003 school year?

9 A. That's correct.

10 Q. Okay. And did they teach phys ed and health?

11 A. That's correct.

12 Q. And you team taught for a period of time with
13 Miss Freebery, correct?

14 A. That's correct.

15 Q. And when was that?

16 A. '96 to 2002, approximately six years, I think.

17 Q. Okay. So did Mr. Wilcoxon take over team
18 teaching with her right after you stopped team teaching?

19 A. When I became student advisor.

20 Q. When you team taught did you become friends with
21 Miss Freebery?

22 A. Correct.

23 Q. Were you friends outside of work?

24 A. No.



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1 Q. That being a mother was making being a teacher
2 more difficult?

3 A. Did she say that exactly? No.

4 Q. Did she infer that?

5 A. She did not infer that.

6 Q. Did she say anything similar to that?

7 A. Not that I'm aware of.

8 Q. Okay. Are you aware of any problems that Miss
9 Freebery was having with her professional life during
10 the 2003-2004 school year?

11 A. I am not. During -- you're saying during the
12 whole school year?

13 Q. Yes.

14 A. With her professional life.

15 Q. Yes.

16 A. Yes.

17 Q. Okay. What was that?

18 A. At one point in time she shared with me that
19 Mr. Wilcoxon was making inappropriate comments. That
20 was in December, I believe.

21 Q. Anything else?

22 A. That's it.

23 Q. Was it early December, late December?

24 A. Mid December.



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1 Q. Was it at about the time that the journal --
2 that you found the journal?

3 A. Prior.

4 Q. How much prior?

5 A. I don't recall.

6 Q. Did she tell you what he said?

7 A. No. If I can correct that, I don't recall that
8 she did.

9 Q. Okay. Did she tell you how many inappropriate
10 comments he made?

11 A. She did not.

12 Q. Did you ask her what he said?

13 A. No, I did not.

14 Q. Where were you when she made these comments?

15 A. Front lobby of Skyline Middle School, trophy
16 case area in front of the office, outside the office.

17 Q. You're absolutely certain this happened before
18 the journal --

19 A. Correct.

20 Q. -- came to light?

21 A. Absolutely certain.

22 Q. During that school year was Miss Freebery
23 disciplined for any reason?

24 A. During the school year? I believe she received



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1 A. I'm aware.

2 Q. And you actually found this journal, correct?

3 A. I did.

4 Q. And where did you find it?

5 A. On top of the desk in the phys ed teacher's
6 office.

7 Q. Can you tell me how this all came about, how you
8 came to find the journal?

9 A. On, I want to say, December 15th Mr. Wilcoxon
10 had called in sick. I was made aware of it late in the
11 morning when classes were about to begin. I don't know
12 who made me aware of it, but immediately went to the
13 emergency -- with the substitute to the emergency plans
14 in the main office. Opened the drawer, pulled out
15 lesson plans that said PE, in fact they had my name on
16 it, I believe. I opened them up and they were out of
17 date. The bell schedule wasn't even correct. There
18 were -- the class lists weren't correct. I searched
19 through the rest of it thinking I had the wrong one.
20 Couldn't find it.

21 Took the substitute down to the PE
22 teacher's office, opened the door, went in looking for
23 plan book. Plan book was not on top of the desk. There
24 was a notepad similar to the one you have in front of



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1 you laying upside down on the top of the desk. I took
2 that and I told the substitute here, this will get you
3 started and have students sign in. He took that, went
4 upstairs to cover the class that was coming in.

5 Q. Okay. When you gave him the notebook did you
6 read what was in the notebook?

7 A. I did not.

8 Q. Okay. How would the notebook get him started?

9 A. It's a blank pad for students to sign in on.
10 That would tell us who's in the class. It would not
11 tell us who's not in the class. So this teacher was
12 blind in the students that belonged in the class. Only
13 the students that showed up would have signed it.

14 Q. Couldn't you have printed a class list from your
15 computer, couldn't you have taken roll that way?

16 A. I could have but in time we -- we had to get
17 that class going. A professional teacher would have had
18 appropriate plans for the substitute in case of a
19 last-minute callout.

20 Q. So why didn't you print the class list?

21 A. Because I -- that wasn't my responsibility to do
22 that. I tried to get that -- I went above and beyond
23 trying to find grade book and bell schedule which
24 weren't available. At that point in time, here, just



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1 BY MR. WILSON:

2 Q. Did he ever tell you that he thought this was
3 Miss Freebery's way of getting back at him for keeping
4 the journal?

5 A. Not that I recall.

6 Q. At one of these meetings did Mr. Wilcoxon state
7 that Miss Freebery brought up the topic of sex with him?

8 A. Can you ask that again?

9 Q. At any of these meetings did Mr. Wilcoxon ever
10 say that Miss Freebery brought up the topic of sex to
11 him?

12 A. He did.

13 Q. And do you recall what he said that she had
14 said?

15 A. I don't recall what he said she said, but he
16 used the term she opened the door as though there was a
17 conversation regarding sex or comments and that because
18 she had made those comments it was now okay for him to
19 say what he said.

20 Q. Okay. Now, I believe you testified that in one
21 of these meetings Miss Basara said to Mr. Wilcoxon if
22 you made these comments you're not to make them any
23 more, correct?

24 A. Correct.



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1 Q. And was a similar direction given to Miss
2 Freebery when Mr. Wilcoxon accused her of making
3 comments?

4 A. I don't think he accused her and said she made
5 comments other than the open the door.

6 Q. Okay. So that --

7 A. So --

8 Q. Go ahead and finish.

9 A. Go ahead.

10 Q. So when he said the opened the door comment that
11 wasn't explored any further?

12 A. I don't recall. I don't -- that was his defense
13 to what she had said.

14 Q. Okay. On January 22nd, 2004, there was another
15 meeting with Mr. Wilcoxon?

16 A. Excuse me. What was the date again?

17 Q. January 22nd, 2004.

18 A. Okay.

19 Q. Do you recall that meeting?

20 A. I do not. Not the date.

21 Q. Do you recall a meeting where Mr. Wilcoxon was
22 given three disciplinary letters?

23 A. I do.

24 Q. I'll represent to you that the record reflects



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1 A. I do.

2 Q. You also talked about having a discussion with
3 her, I think you said at a trophy case?

4 A. Lobby area.

5 Q. And that was prior to December 15th?

6 A. Yes.

7 Q. Can you give us a little more detail on what
8 Miss Freebery said to you about the comments
9 Mr. Wilcoxon was making and what you said back?

10 A. Miss Freebery said that Mr. Wilcoxon was making
11 inappropriate comments to her and my response to her was
12 you need to tell him to stop.

13 Q. Okay. And that was prior to December 15th?

14 A. That's correct.

15 Q. Did you ever overhear any comments by
16 Mr. Wilcoxon regarding Miss Freebery being pregnant?

17 A. I do not.

18 Q. When at the meeting on December 17th there was a
19 conversation that was a dispute resolution-type
20 conversation and during that meeting did Miss Freebery
21 discuss inappropriate remarks that Mr. Wilcoxon made?

22 A. She did.

23 Q. Do you recall the pregnancy issue coming up
24 during that conversation?



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FRANK RUMFORD

53

1 A. It did.

2 Q. There was testimony earlier about Mr. Wilcoxon
3 making a comment to Miss Basara and to others about Miss
4 Freebery being the closest thing to a wife and bitch
5 that he had. Do you recall that being discussed at any
6 point?

7 A. I do.

8 Q. When those remarks were made what did
9 Mr. Wilcoxon say?

10 A. I believe he denied them.

11 Q. Did he make any remarks about you said opening
12 the door at one point?

13 A. He did say that.

14 MR. WILSON: Objection. Asked and
15 answered.

16 BY MR. WILLOUGHBY:

17 Q. Right. Can you take us through what he said
18 when those remarks were made and what else he said?

19 A. When the initial comments were made by Miss
20 Freebery in that meeting Mr. Wilcoxon replied to Miss
21 Freebery that, and Miss Basara and myself, that she had
22 opened the door with comments made by him to her -- by
23 her to him.

24 Q. And did he refer to anything in particular?



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A296

1 A. He did not.

2 Q. Did he say anything else about what his intent
3 was with respect to the comments he had made?

4 A. Intent, no.

5 Q. Did he say anything about joking, things like
6 that?

7 A. He did say I was just kidding, yes.

8 Q. And you listened to the tape of that meeting,
9 correct?

10 A. I did listen.

11 Q. Okay. And was that part of the conversation on
12 the tape?

13 A. The inappropriate comments?

14 Q. His response when Miss Freebery mentioned
15 inappropriate comments?

16 A. I did not hear it.

17 Q. Did he turn the tape off at that point?

18 A. He did.

19 Q. Did you listen to any other tapes of
20 conversations that Mr. Wilcoxon secretly made other than
21 that one day?

22 A. I believe I did.

23 Q. Okay. What others did you listen to?

24 A. I believe it was the day before.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICHARD WILCOXON : CIVIL ACTION
Plaintiff :
-v- :
RED CLAY CONSOLIDATED :
SCHOOL DISTRICT BOARD OF : NO. 05-524-SLR
EDUCATION, and JANAY :
FREEBERRY :
Defendants :

Deposition of JANAY FREEBERRY, taken before
Elaine Gallagher Parrish, Registered Professional
Reporter, at 1509 Gilpin Avenue, Wilmington, Delaware on
May 25, 2006, commencing approximately at 2:40 p.m.

APPEARANCES:

TIMOTHY J. WILSON, ESQ.
Margolis Edelstein
1509 Gilpin Avenue
Wilmington, Delaware 19806
for the Plaintiff,

BARRY M. WILLOUGHBY, ESQ.
Young Conaway Stargatt & Taylor, LLP
P.O. Box 391
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
for the Defendants.

ALSO PRESENT:

DEBORAH COLES, Paralegal
RICHARD WILCOXON
DIANE DUNMON

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477



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A298

JANAY FREEBERRY

4

1 Q. Did you go to college?

2 A. Yes.

3 Q. Where did you go?

4 A. University of Delaware.

5 Q. Graduate?

6 A. Yes.

7 Q. What year?

8 A. 1995.

9 Q. And what is your degree in?

10 A. Bachelor's of Science, physical education and
11 health teacher.

12 Q. Did you graduate with honors?

13 A. Yes.

14 Q. What were the honors?

15 A. I had distinguished honors my first year and
16 then graduated with a grade point average that allows
17 you to be considered honors and I was also awarded the
18 Woman of Promise Award for that year.

19 Q. What does the Woman of Promise signify?

20 A. It is an award that the university acknowledges
21 a woman who they believe is going to make something of
22 herself and do something good some day for others,
23 excuse me.

24 Q. Have you done any graduate work?



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A299

JANAY FREEBERY

5

1 A. Yes.

2 Q. " Do you have any degrees?

3 A. Yes.

4 Q. And from where?

5 A. Wilmington College.

6 Q. What degree?

7 A. A master's of education with a concentration in
8 reading to be a reading specialist.

9 Q. What year did you get that?

10 A. 2004.

11 Q. Are you currently employed by Red Clay?

12 A. Yes.

13 Q. And in what capacity?

14 A. Physical education, health teacher.

15 Q. Is that the same title you had in 2002-2003
16 school year?

17 A. Yes.

18 Q. And the 2003-2004 school year?

19 A. Yes.

20 Q. How long have you worked for Red Clay?

21 A. Since 1995.

22 Q. Did you meet with Mr. Willoughby to prepare for
23 today's deposition?

24 A. Yes.



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A300

JANAY FREEBERRY

7

1 Q. Okay. But anybody that has any knowledge of the
2 case?

3 A. No.

4 Q. And prior to the 2002-2003 school year there has
5 been testimony that you were out of work that year or
6 part of that year to give birth?

7 A. Yes.

8 Q. Okay. Was there any tension between you and
9 Mr. Wilcoxon during the 2002-2003 school year?

10 A. Tension meaning negative tension? The tension
11 -- the only tension that was there in the beginning when
12 I first returned and met him was that I basically had to
13 take the lead, mentor him, guide him. I had to
14 basically carry the load as far as lesson plans, units
15 were concerned, ideas, handouts, books.

16 Q. Did you resent Mr. Wilcoxon for this?

17 A. No, because I know -- I was informed that he and
18 the substitute were having a tough time getting class
19 together, discipline management, things like that.

20 Q. By the substitute, you mean the person that
21 filled in for you the prior year?

22 A. Yes.

23 Q. And who was that?

24 A. Jill Orensky, O-r-e-n-s-k-y. I don't know her.



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A301

JANAY FREEBERY

8

1 Q. Do you know where she's at now?

2 A. Absolutely no idea.

3 Q. During that first year back were you having any
4 personal problems in the 2002-2003 school year?

5 A. The only ones were in relation to my husband.

6 Q. And you were going through a divorce?

7 A. Yes.

8 Q. Did that cause you any emotional distress?

9 A. I guess so, yeah.

10 Q. Were you during that time period were you ever
11 medicated for depression?

12 A. No.

13 Q. Did you ever have difficulty sleeping?

14 A. No. Other than when a newborn baby would wake
15 me up.

16 Q. When was your baby born?

17 A. April 4th, 2002.

18 Q. And it was a daughter, correct?

19 A. Uh-huh.

20 Q. Was that a problem with your daughter, waking
21 you up at night?

22 A. No. Just normal newborn baby things. She still
23 does it.

24 Q. Okay. Did the breakup of your marriage and the



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A302

JANAY FREEBERY

11

1 Q. So did you resent this that in the second year
2 that he hadn't stepped up and, in your perspective to
3 start pulling his own weight?

4 A. I -- I wouldn't say resented because I'm not
5 that kind of person. I was disappointed and lost a lot
6 of confidence in him as a partner because of what I knew
7 in the past. He was very different and just I felt that
8 I was carrying a lot of the weight, but I had taught it
9 and I had done things and I had experienced I guess a
10 lot more situations, so I just would handle them and
11 move on. I was asked when I returned or mentioned that
12 they were struggling and they couldn't wait for me to
13 come back, and Mr. Wilcoxon even himself mentioned that
14 things were much better once I was there due to
15 classroom management and disciplinary procedures.

16 Q. Did you, in a sense, feel as though you were
17 Mr. Wilcoxon's supervisor?

18 A. Never.

19 Q. But you did feel as though you were a mentor to
20 him?

21 A. I was asked to help him develop better
22 disciplinary procedures and classroom management and
23 lessons and I think as a team partner you just do that
24 with each other.



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1 Q. Did you ever give instruction to Mr. Wilcoxon as
2 to what he needed to do?

3 A. I would have -- I would ask him if he had
4 anything to contribute to the planning of a new lesson
5 or a new topic, subject topic such as drugs, alcohol.
6 He would say no. I would show him all the handouts for
7 the entire unit that I had developed over the years, and
8 he would say those are just fine, and I would say okay,
9 I'm going to take care and copy this for this day, can
10 you please copy these for this day. That was mainly I
11 guess the only kind of direction I -- or instruction I
12 would give to him other than I'd have to ask him to help
13 me with -- if you're not going to contribute to the
14 planning of the lessons can you at least contribute to
15 running the copies.

16 Q. Did you feel that since you were contributing
17 more in terms of planning the lessons that he should
18 contribute more in terms of teaching the lessons and,
19 you know, interacting with the students in the class?

20 A. Never. Because I did most of the teaching
21 because when he did do it, just as anyone else would
22 experience when you're teaching someone else's lesson,
23 you leave things out because you didn't develop it
24 yourself. So when he would be instructing I was always



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JANAY FREEBERRY

13

1 having to interject and make sure that the students got
2 the information that they would then be responsible for
3 or make sure that they had understanding because a lot
4 of times they didn't.

5 Q. Did you continue to have personal issues during
6 the 2003-2004 school years regarding the breakup of your
7 marriage and your daughter?

8 A. I don't believe so because the divorce was final
9 on February 6th of that year.

10 Q. Of 2003?

11 A. Yes.

12 Q. Or 2004?

13 A. 2000 -- she was born in April of '02, so -- '03.

14 Q. All right. During -- from here on out I am
15 going to be talking about 2003-2004 unless I indicate
16 otherwise, okay?

17 A. Okay.

18 Q. During that year were you disciplined at all?

19 A. No.

20 Q. Were you given any verbal warnings?

21 A. Yes.

22 Q. And what was that for?

23 A. That was only during the situation that the log
24 was found and Mrs. Basara said that if there was



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A305

1 Q. You just referred to Miss Basara as Janet, is
2 she a friend of yours?

3 A. A work friend.

4 Q. What's your definition of a work friend?

5 A. Someone that you have a positive relationship or
6 a cooperative relationship or you work with.

7 Q. Do you ever see her outside of work?

8 A. No.

9 Q. Okay. Can you explain - you're aware of the
10 journal we have been talking about all day - can you
11 explain to me how you came into possession of that
12 journal?

13 A. On December 15th, 2003 Mr. Wilcoxon called out
14 sick. There were no lesson plans available. I didn't
15 have anything from him, didn't know he was going to be
16 out. Therefore the sub was very confused to what to do.
17 Apparently the sub discussed it with Mr. Rumford. I
18 don't know how it ended up coming about, but Mr. Rumford
19 gave the legal pad to the substitute. I don't know what
20 their conversation was prior to that because I wasn't
21 there. The substitute just was very, very upset, did
22 not know what to do, couldn't -- didn't even know what
23 to do when he was told just to take the attendance. So
24 I said to him, don't worry about it, I will handle this,



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JANAY FREEBERRY

23

1 and I just brought the two classes together and very
2 quickly¹ came up with -- altered my entire lesson and
3 schedule for the day that I planned to be able to teach
4 my kids, and covered for him.

5 I took the legal pad from the sub and said
6 don't worry, I'm going to show you how to do this and
7 then I will take attendance for my kids for the rest of
8 the day, you can take attendance for his like this or
9 with whatever they give you later, and I just took the
10 pad, he handed it to me, I just took it. I went like
11 this to flip it up to go to write the date on it and
12 right then and there I saw log on Janay and I just stood
13 there and, you know, I'm in the middle of 60, 70 kids, a
14 substitute, who has no idea of what he's to do to teach
15 all day long, and I just stood there and I was in
16 complete and utter shock. And I said to myself, you got
17 to get yourself together. You don't even know what's
18 going on with this. So I just said to the substitute,
19 okay, I'm going to give you another piece of paper,
20 we're going to take attendance on something completely
21 different. Let's just put this aside. I don't even
22 know what else I did. I was so upset.

23 I went and taught the class, two classes.
24 In between I called Mr. Rumford and said I don't know



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A307

1 what's going on but I have some log here that's on me,
2 and it's absolutely blowing my mind, and I said, you
3 know, I'm having to cover for his classes. I'm having
4 to teach my class. This poor substitute doesn't know
5 what to do, and all of a sudden I'm put on the spot and
6 I was upset. And he said come up after this class and
7 we'll talk with you. I said okay. So I kept the log.
8 I didn't do anything to it. At that time I could have
9 done whatever I wanted to that log, but I knew that
10 something was wrong and I thought to myself why would
11 someone ever do this to me? I have been here for ten
12 years, never had one negative conflict, one negative
13 conversation. I have never had an incident with any
14 teacher in this building, ever. And I was shocked. I
15 was completely shocked and very upset, confused.

16 I left the log laying there for the entire
17 two classes and then I walked it into Janet's office.

18 Q. Do you recall who the sub was?

19 A. I do not.

20 Q. You heard testimony earlier today about a
21 comment that supposedly you made about Mr. Wilcoxon
22 being difficult to work with?

23 A. Yes.

24 Q. Did you ever make that comment?



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JANAY FREEBERRY

25

1 A. No.

2 Q. Did you ever say anything to that effect about
3 working with Mr. Wilcoxon, anything similar to him being
4 difficult to work with?

5 A. The only time I mentioned something was briefly
6 to Frank that it was -- it was getting tougher and
7 tougher for me to handle the covering, the constant
8 load, and the inappropriate comments were getting out of
9 hand.

10 Q. And what were the inappropriate comments?

11 A. What were they?

12 Q. Yes.

13 A. There were a lot. Do you want me to go through
14 and just tell you a ton of them?

15 Q. Sure.

16 MR. WILLOUGHBY: Tell him the ones you can
17 remember.

18 THE WITNESS: He would come in during our
19 planning period and pull a chair out. I had two chairs:
20 One at my desk, one off to the left side of my desk. He
21 would pull that chair right up next to me, whatever I
22 was doing on my computer, lesson plans, adjustments,
23 changes, telephone calls, he would just come and sit
24 right down in the girls locker room and I would



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A309

JANAY FREEBERRY

26

1 sometimes look at him like, what do you need, and he
2 would just say, nothing, just go ahead do what you're
3 doing. I said, do you want to plan something? Do you
4 want to get something together for another lesson? Do
5 you have a problem with something? Do you want to talk
6 about something? No. And I would say okay. Well,
7 what's -- what's up then?

8 And he would just say something, you know,
9 very rude and disrespectful such as, so, what's the deal
10 with you and Bruce, have you had sex with him yet?

11 And I would say, where -- where would you
12 come up with this?

13 Well, how long have you been dating him
14 now? Isn't it about time you have had sex with him.

15 And I would say, this is none of your
16 business. This is not your concern.

17 Oh, come on, I'm just kidding. Come on,
18 you can tell me. Come on. I'm going through a divorce.
19 I'm not getting any. I'd love to hear from somebody who
20 might be. Come on, are you still dating John, too?

21 I would say, that's none of your business.

22 Come on, that would be great. You don't
23 know anyone other than your husband and wouldn't that be
24 great to date two guys at once? Anybody would love



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A310

JANAY FREEBERRY

27

1 that.

2 " What are you and Bruce doing this weekend?

3 I don't know.

4 He would say, come on, you don't know what
5 you're going to do? And he would say, I sure know what
6 he's going to do. And I would say, Rich, that's enough.
7 You're making me a little sick here. I just went
8 through a divorce. I have a newborn baby. I have trust
9 issues. I did share with him some of the different
10 things I was dealing with with my ex-husband. He knew I
11 had trust issues. He knew I was going to possibly have
12 relationship issues, and he pushed it. I would walk by
13 him in the gym one time, "Sure do look good in those
14 pants" in front of students.

15 BY MR. WILSON:

16 Q. When did that happen?

17 A. I would say fall of 2003. Possibly November,
18 October, November. Students were -- students were
19 there. Students would comment, you know, Miss Freeberry,
20 I think he's stalking you. I think he's staring at you
21 again. We think Mr. Wilcoxon likes you, Miss Freeberry.
22 I would say to them, that's completely ridiculous.
23 We're team teaching partners. That's the only reason we
24 spend the time we have to together. Enough. And I



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A311

JANAY FREEBERRY

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1 would shut it down very quickly.

2 When I did stop team teaching with him I
3 did have two students actually say oh, good, you finally
4 gave him the boot, it's about time, Miss Freeberry. I
5 thought to myself you have got to be kidding me, even
6 the kids picked up on some of the inappropriateness,
7 even though I -- it was completely avoided during class.

8 He said to me, I must have gone -- I would
9 have to run through the gym to go to the bathroom. I
10 have a weak stomach. I mean, I do. So sometimes my
11 stomach would be bothering me. I would wave to him. He
12 knew I was running out to go to the bathroom. He said
13 to me later that day, so what's the deal, should I be
14 congratulating you?

15 I said, what do you mean?

16 He said, you must be pregnant. You're
17 complaining you're tired, you're complaining you're
18 nauseous, you're running out to go to the bathroom a
19 lot. Nothing else other than you must be pregnant.

20 I said, please, I have a weak stomach, my
21 stomach is upset, or I drank a lot of water. I said,
22 don't even go there, please, and I would walk away.

23 He then said, next time I see Bruce I'm
24 going to have to congratulate Bruce because I'm going



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1 to tell him congratulations for being a daddy again.

2 ' I said Rich, please don't do something like
3 that. That is highly embarrassing. Bruce doesn't need
4 that. I don't need that. I just told you that is not
5 the case. That is the last thing that could possibly go
6 on in my life right now. I don't need it.

7 He waited and waited and waited for the
8 next time Bruce came back to drop by on planning period
9 my coffee. Of course he made his way right over to
10 Bruce who was outside the doors of the outside, like the
11 exterior doors of the gym, and he said to Bruce, so
12 congratulations, daddy, I hear you're going to be a
13 daddy again. And Bruce looked at him and said what are
14 you talking about? I said, Rich, I can't even believe,
15 I have asked you not to go there and do things like
16 that. You know that's inappropriate. And Bruce is
17 like, dude, you're being ridiculous. We were both
18 embarrassed. Bruce and I were both embarrassed. He's
19 thinking why would this guy possibly say this. Why.

20 He then proceeded the third time to make me
21 completely uncomfortable with that same comment in the
22 main office in Frank's presence and Cindy's presence,
23 Cindy Falgowski, F-a-l-g-o-w-s-k-i, and Frank Rumford's,
24 I was talking to Frank and Cindy during our planning



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JANAY FREEBERRY

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1 period discussing - I don't know whether it was an
2 afterschool event because Cindy would help me
3 periodically whenever she could, her and a couple other
4 teachers, with intramurals. I probably was checking --
5 I don't know what I was checking, but the three of us
6 were standing in the main office at the front counter
7 with parents, teachers, students, and other faculty
8 members such as the secretaries, and he said, so, have
9 you congratulated Janay? And Cindy goes, oh, on what?
10 He goes you didn't hear? She's pregnant. And Cindy is,
11 like, what are you talking about? And I looked at him,
12 I said, Rich, I have asked you to stop. It's not funny
13 any more. He didn't even know what we were talking
14 about. He just came right in and interrupted the entire
15 conversation and said did you congratulate her yet.

16 He would ask me on a normal basis down the
17 locker room, so, when are you going to have sex with
18 Bruce? How long would you like to be having sex or how
19 long do you have sex with Bruce?

20 He would say other inappropriate comments
21 such as in the faculty meeting, I was holding the staff
22 Christmas party at my house, and he had been drawn --
23 his name to win a poinsettia. As he was walking out he
24 says well, I don't need this poinsettia. He says you



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1 can take it and put it at your house for the party. I
2 said thank you. He turned around and said, why not,
3 you're the closest thing I have to a wife and a bitch.

4 Q. Where did this happen?

5 A. Right after a faculty meeting in the library.

6 Q. Okay. I'm sorry. I didn't mean to interrupt
7 you.

8 A. We were -- the faculty meeting was over. We
9 were all leaving. As we were walking out of the library
10 that's when it happened.

11 Q. Okay.

12 A. And I was so embarrassed. Other comments,
13 constant comments about playing two men, fooling around
14 with two men, all the time I would say to him please,
15 please stop asking me.

16 Oh, come on. Cut me a break. You know,
17 I'm just kidding with you.

18 That was it. I mean there is a lot of
19 examples.

20 Q. When did the comments start?

21 A. They started towards the end of the first year
22 that we were working together. I figured -- I figured
23 he was just somebody -- another guy that just made
24 inappropriate comments or said inappropriate things



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1 because of being immature. I just kind of shrugged it
2 off, figured sooner or later he'll smarten up and just
3 leave me alone about it. He's not going to keep asking
4 me questions because I'm constantly telling him to leave
5 me alone.

6 Q. And is it your testimony that it continued into
7 the next year?

8 A. Yes.

9 Q. Why is it that you didn't come forward with a
10 complaint earlier than you did?

11 A. Because at the end of the first year I just
12 assumed, like I said, that over the summer he'll start
13 realizing, you know, okay, I need to get some lessons
14 together, I need to get some information, I'll start
15 researching over the summer for some stuff to contribute
16 to lessons, and I assumed he would figure, okay, I'm not
17 going to bother her, it's not going anywhere, so I'm not
18 going to bother with her any more as far as questioning
19 and saying things to her, and I just assumed that he
20 would just grow up and not do it any more, not ask any
21 more.

22 Q. But he didn't?

23 A. Unh-unh.

24 Q. So the next year when this continued why didn't



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1 you make a complaint?

2 A. " I once again thought I could handle this myself
3 by telling him and shutting it down. There was a -- I
4 was embarrassed. I mean, I don't know -- it's
5 embarrassing to sit here and say some somebody would ask
6 you how long did it take you to have sex or you know
7 what he wants to do to you. Come on, you're an
8 attractive woman, you could get any guy you want, he
9 would say to me, things like that. It was embarrassing.
10 I didn't feel -- I don't know. I didn't feel that I
11 needed to talk about it because it was embarrassing. I
12 didn't see myself going in and sitting Mr. Rumford or
13 Mrs. Basara down and saying Rich is asking me how long
14 it takes me to have sex with my boyfriend. It just was
15 a weird situation. I didn't know what to do.

16 I was embarrassed and also I just -- there
17 was so much going on that year, with Nick our, Nick
18 Manolakas, our principal, being diagnosed with a very
19 aggressive cancer, then quickly changing gears, putting
20 Janet as principal, moving Frank, there was a lot of
21 movement. I'm the last person to try to create a
22 problem. You know, I'm the kind you just deal with it
23 yourself, you try to fix it yourself. If it gets too
24 bad that's when you inconvenience someone else. I just



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1 didn't feel that I wanted to cause any more rough waters
2 for the office staff. They were going through enough
3 transition and turmoil at the time.

4 Q. So what was it to make you finally decide to
5 make the complaint?

6 A. Well, I didn't -- I just -- in the winter, early
7 winter, I mentioned something to Frank Rumford just
8 because it had gotten to the point where I think I was
9 just utterly disgusted by it and I looked at Skyline as
10 my normal safe place. I came to work every day and I
11 loved it. I loved what I did. I loved the students. I
12 enjoyed the staff. I loved what I did. That was my
13 safe place. That was my routine. You had a schedule.
14 Whereas at home I was still learning. I was learning
15 how to become a single mom. Didn't know, wasn't
16 prepared for that. So Skyline was my joy to come to
17 because that was the normal place.

18 I was starting to feel uncomfortable there.
19 I was starting to feel embarrassed and very nervous all
20 the time. When he would come in that locker room door
21 would open and I would just feel myself, oh, my God,
22 what is he going to say today? What's he going to do
23 today? It was a weird feeling to the point where
24 sometimes I actually went into my bathroom which is in



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1 the office, I would close my door to the office, go into
2 the bathroom and just stand there with the light
3 completely off, and sometimes he would just stand
4 outside of my locker room office door and wait to see
5 whether I was going to come in or out or whether I
6 wasn't even in there yet and that he was just waiting.
7 There were many times when I would come walking into my
8 locker room and there was Rich standing in the girl's
9 locker room outside of my door. And I knew something
10 was wrong.

11 So I said something to Frank Rumford that
12 I'm having some problems. He's being a little
13 inappropriate to me and I don't know what to do. And
14 Frank said what you need to do is stop it now. And that
15 was it. So I got a little more firmer with my don't ask
16 me questions like that. Don't say things like that.
17 Somebody could overhear you. Somebody might take that
18 as a rumor and spread it around that I'm pregnant.
19 Somebody might take it as a rumor that, you know, I'm
20 the closest thing you have to a wife and a bitch. And
21 it was embarrassing and I just -- I don't know. I
22 mentioned it to him. Other people heard comments that
23 he made to me that were completely inappropriate and had
24 said something to him at that time, too.



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1 Q. Who?

2 A. At that the wife and the bitch comment Sean
3 Farilla was right there and had said I can't --
4 something along the lines of I can't believe you said
5 that. That's completely inappropriate to her. And I
6 just kind of was like. . . You know, in other words,
7 you people have no clue. You have no clue.

8 Q. Did anybody else hear it?

9 A. Oh, I'm sure. I mean there was a whole entire
10 staff leaving a faculty meeting when he heard it. I'm
11 pretty sure Rebecca Perse heard it. There could have
12 been ten, seven -- seven to ten other people right
13 there.

14 Q. You mentioned something to Frank Rumford you
15 said in early winter?

16 MR. WILLOUGHBY: I don't think she said
17 early winter but . . .

18 THE WITNESS: I think, no. I think I said
19 -- I don't know what I said. I mentioned something to
20 Frank -- no, it was definitely in the fall of '03 that I
21 mentioned something to Frank. It was either in November
22 or -- it was -- I think it was in November of '03, maybe
23 early December, late November, but it was right around
24 that time, because it was prior to the whole wife and



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1 bitch comment. It was prior to that.

2 BY MR. WILSON:

3 Q. Okay.

4 A. And it was right around the same time as the
5 pregnancy comment was made in front of people. That was
6 the time that it happened so . . .

7 Q. But Mr. Rumford didn't do anything about it?

8 A. He told me that I needed - I guess because I
9 didn't give him specifics because I was too embarrassed
10 - I don't think he really knew or understood the
11 magnitude of it. He just said you need to tell him stop
12 right now.

13 Q. Okay. So what made you decide to bring it to
14 Janet Basara's attention and to have something done?

15 MR. WILLOUGHBY: I object. There is no
16 foundation for that question.

17 BY MR. WILSON:

18 Q. You can answer the question.

19 MR. WILLOUGHBY: You can answer the
20 question. Why don't you repeat the question?

21 (Record read.)

22 MR. WILLOUGHBY: I object to the form of
23 the question.

24 THE WITNESS: Can you say it again? Can



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1 you -- am I missing something? I guess I don't --

2 ' MR. WILLOUGHBY: He wants to know how it
3 came about that you disclosed --

4 MR. WILSON: I'll ask her.

5 BY MR. WILSON:

6 Q. Obviously this became an issue, okay.

7 A. Yes.

8 Q. How did it become an issue?

9 A. The only time that I discussed it formally with
10 Mrs. Basara was when she called the meeting on the
11 December 15th, the day the log was found.

12 Q. Okay. Why did you decide to share it with
13 Mrs. Basara that day?

14 A. Because at that time at the meeting it was just
15 her, myself and Mr. Rumford, and she said to me, you
16 know, I was very upset at the time and she said to me
17 what -- obviously something is wrong here. She said,
18 you know, you -- something is not right with this team
19 teaching relationship. What are all the issues? What
20 is going on? What are the problems here? Because there
21 is something not right for someone else -- for you to be
22 this upset, someone else to be keeping a log. There is
23 something going on with your partnership. What is going
24 on? And the purpose of her meeting was to basically



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1 find out what's going on here.

2 So I told her. I said what was going on.
3 I said I am, you know, I'm carrying the weight, you know
4 you guys are relying on me to help a new teacher become
5 a better disciplinarian and a better classroom manager,
6 a better lesson planner, a better teacher, you put that
7 on me, and I then decided that that's what I would do.
8 So I did not want to disrupt the office staff, her, Mr.
9 Rumford, anyone else. I just did what I needed to do.
10 I said to her, you know, it was getting very difficult.
11 The entire time he's never presented a lesson. He's
12 never presented an idea. He's never given me a handout.
13 He's never shown me an old lesson from another building
14 or another school or an example. He's never come up
15 with anything. You know, I'm dealing with that every
16 single day.

17 I told her that I was embarrassed about
18 some other things. I was feeling uncomfortable with the
19 inappropriate comments that he was making and that's
20 when she said what are you talking about? What's
21 happening? What else is going on? And that's when I
22 mentioned them.

23 Q. Okay. Did Mr. Wilcoxon deny making the
24 comments?



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1 my school computer, saying that he's sorry that I found
2 the book, it must have been very upsetting to me. It
3 must have been, but you have to understand that when I
4 heard that you were complaining I was difficult to work
5 with I needed to cover my own ass in case you went to
6 administration. I never intended to show it to anybody.
7 And he said -- he never told me he was sorry, though,
8 never, because I kept waiting. And I'm the kind of
9 person that if somebody did, if he approached me, even
10 if it was just the two of us, and if he approached me
11 and said to me, I am sorry, I did this, I lied about
12 stuff to make you look bad because I was afraid of what
13 you had on me, can we please reconcile this and move on?
14 I'm going to carry my weight now. I was taking
15 advantage of you all the time. You did carry me. You
16 did teach me. You did help me. I'm going to contribute
17 now, and I will never ask you a personal, sexual,
18 inappropriate comments again; I think it would have
19 ended right then and there and we would not be sitting
20 here right now because I would have accepted the apology
21 and I would have taught with him again.

22 But I was waiting, every day, waiting for
23 him to say he was sorry. Because he admitted in that
24 meeting on December 17th that he exaggerated times, he



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1 lied about certain things, and some of his exact wording
2 because I misconstrued my words. I was angry. Janay, I
3 was angry. As soon as I heard these accusations that
4 you had brought up against me, I was angry. He did
5 admit that he was saying inappropriate things such as
6 the pregnancy comments. He admitted those. He admitted
7 things in that meeting and now he's saying that he
8 didn't, and he did, and they were on that tape because
9 right when he cut it off that's when I was giving
10 examples. And he did, and he said to me right then and
11 there, you just don't get my personality, a lot of
12 people don't get my personality. I was only joking with
13 you. I was only kidding with you. And I said but you
14 hurt me and you made me feel uncomfortable a lot.

15 Q. You just said that if he had apologized we
16 wouldn't be sitting here?

17 A. Meaning that I wouldn't be -- none of this
18 defamation stuff or whatever is going on would be
19 happening because it would have ended right then and
20 there on December 17th in that meeting with the four of
21 us.

22 Q. Do you think he would have been terminated at
23 the end of the year?

24 A. I have no idea. I had no idea of the other



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICHARD WILCOXON,

Plaintiff,

v.

RED CLAY CONSOLIDATED
SCHOOL DISTRICT BOARD OF
EDUCATION, and JANAY FREEBERY,

Defendants.

C.A. No. 05-524 (SLR)

JURY TRIAL DEMANDED

VERIFICATION OF SEAN M. FURILLA

Pursuant to 28 U.S.C. § 1746, I, Sean M. Furilla, hereby submit the following declaration under penalty of perjury:

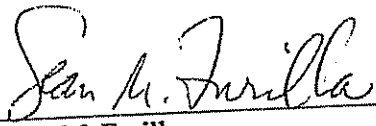
1. I am the Band Director for Skyline Middle School and have worked with Janay Freebery for six years. I have always known her as a truthful, conscientious employee who is dedicated to her students. I am also acquainted with Mr. Richard Wilcoxon. He was the male Physical Education/Health teacher at Skyline during the 2002-2003 and 2003-2004 school years.

2. I personally heard Mr. Wilcoxon make an inappropriate comment of a sexual nature to Ms. Freebery. This occurred at the faculty meeting in December of 2003 during the Christmas holiday season. The meeting took place in the Library. At the end of the meeting Mr. Wilcoxon received a poinsettia.

4. I was seated at a table with Ms. Freebery. Mr. Wilcoxon walked over to the table where I was seated. Referring to Ms. Freebery, he stated that he was giving her the poinsettia because she is "the closest thing to a wife and bitch that I have." I personally heard this remark. It was said directly to me and Ms. Freebery.

5. Ms. Freebery seemed to be in a state of shock after Mr. Wilcoxon's statement. I made a direct comment to Mr. Wilcoxon and told him that what he said was completely inappropriate. Mr. Wilcoxon then left the library.

I, Sean M. Furilla, declare under penalty of perjury that the foregoing is true and correct.


Sean M. Furilla

Dated: 6/26/06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICHARD WILCOXON,

Plaintiff,

v.

RED CLAY CONSOLIDATED
SCHOOL DISTRICT BOARD OF
EDUCATION, and JANAY FREEBERY,

Defendants.

C.A. No. 05-524 (SLR)

JURY TRIAL DEMANDED

VERIFICATION OF CYNTHIA A. FALGOWSKI

Pursuant to 28 U.S.C. § 1746, I, Cynthia A. Falgowski, hereby submit the following declaration under penalty of perjury:

1. I am employed as an Educational Diagnostician for Red Clay School District. I work at the Skyline Middle School and am personally acquainted with Ms. Janay Freebery and Mr. Richard Wilcoxon.
2. Ms. Freebery was the Girls' Physical Education/Health Teacher at Skyline when I arrived at Skyline through and including the 2003-2004 school year. She was on maternity leave for the Fall semester of the 2002-2003 school year and returned to work early in the second semester, around January of 2003. Ms. Freebery has always been an outstanding teacher. She is known to be honest, cooperative with her co-workers and dedicated to the students.
3. During the 2002-2003 and 2003-2004 school years, Mr. Wilcoxon was the Boys' Physical Education/Health Teacher. My contact with Mr. Wilcoxon was limited, but I was not impressed with his initiative during those years. As set forth below, although I had limited contact with him, I received at least one complaint from a parent who observed Mr. Wilcoxon teaching during the 2002-2003 school year before Ms. Freebery returned from maternity leave.

4. I personally heard Mr. Wilcoxon make two inappropriate remarks of a sexual nature to Ms. Freebery.

5. First, I was present and personally heard Mr. Wilcoxon state, seemingly out of the blue, "Did you know that Janay was pregnant?" Ms. Freebery was extremely embarrassed and asked Mr. Wilcoxon not to repeat the comment.

6. I asked Mr. Wilcoxon why he would say something like that. He responded that he made the statement because Janay was "always tired and nauseated" and listed other pregnancy symptoms. I told Mr. Wilcoxon that it did not mean she was pregnant. I thought the remark was extremely inappropriate and embarrassing. I also thought the statement could be potentially damaging to Ms. Freebery's reputation, since she is a single parent.

7. Second, at a faculty meeting in December of 2003, I was present when Mr. Wilcoxon received a poinsettia. I personally heard Mr. Wilcoxon make another inappropriate remark of a sexual nature later that day.

8. Mr. Wilcoxon and I were leaving the building and he was carrying the poinsettia he received at the faculty meeting to his car. I commented to him something to the effect that, "Rich, you got a poinsettia."

9. Mr. Wilcoxon responded by saying directly to me that, "yes, I'm giving it to Janay because she's the closest thing I have to a wife and a bitch."


10. I was shocked and embarrassed by Mr. Wilcoxon's statement. It was completely inappropriate.

11. In addition to the inappropriate comments I heard as set forth above, I also have personal knowledge in my role as Educational Diagnostician for Skyline Middle School of at least one parent complaint concerning Mr. Wilcoxon's performance as a teacher.

12. A special education student's mother, E- H-, made a complaint to me concerning Mr. Wilcoxon. One of the services that E- H- needed involved his health class. I invited her to sit in on one of the classes taught by Mr. Wilcoxon. Ms. Freebery was on maternity leave at the time.

13. E-H-'s mother reported to me after sitting in on the class that it was very mismanaged and out of control. She said that if things didn't change she was going to go to the District. I reported this to Janet Basara, who at the time was Assistant Principal. This occurred in the 2002-2003 school year before Ms. Freebery's returned from maternity leave.

I, Cynthia A. Falgowski, declare under penalty of perjury that the foregoing is true and correct.


Cynthia A. Falgowski

Dated: 7/11/06